

(ii) Verification that the driver participates or participated in the program(s).

(iii) Verification that the program(s) conforms to part 40 of this title.

(iv) Verification that the driver is qualified under the rules of this part, including that the driver has not refused to be tested for controlled substances.

(v) The date the driver was last tested for alcohol or controlled substances.

(vi) The results of any tests taken within the previous six months and any other violations of subpart B of this part.

(2) An employer who uses, but does not employ, a driver more than once a year to operate commercial motor vehicles must obtain the information in paragraph (d)(1) of this section at least once every six months. The records prepared under this paragraph shall be maintained in accordance with § 382.401. If the employer cannot verify that the driver is participating in a controlled substances testing program in accordance with this part and part 40, the employer shall conduct a pre-employment alcohol and/or controlled substances test.

(e) Notwithstanding any other provisions of this subpart, all provisions and requirements in this section pertaining to pre-employment testing for alcohol are vacated as of May 1, 1995.

#### § 382.303 Post-accident testing.

(a) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for alcohol and controlled substances each surviving driver:

(1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or

(2) Who receives a citation under State or local law for a moving traffic violation arising from the accident, if the accident involved:

(i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle

to be transported away from the scene by a tow truck or other motor vehicle.

(3) This table notes when a post-accident test is required to be conducted by paragraphs (a)(1) and (a)(2) of this section.

TABLE FOR § 382.303(A)(3)

Type of accident involved	Citation issued to the CMV driver	Test must be performed by employer
Human fatality .....	YES .....	YES.
	NO .....	YES.
Bodily injury with immediate medical treatment away from the scene.	YES .....	YES.
	NO .....	NO.
Disabling damage to any motor vehicle requiring tow away.	YES .....	YES.
	NO .....	NO.

(b)(1) *Alcohol tests.* If a test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FHWA upon request of the Associate Administrator.

(2) For the years stated in this paragraph, employers who submit MIS reports shall submit to the FHWA each record of a test required by this section that is not completed within eight hours. The employer's records of tests that are not completed within eight hours shall be submitted to the FHWA by March 15, 1996; March 15, 1997, and March 15, 1998, for calendar years 1995, 1996, and 1997, respectively. Employers shall append these records to their MIS submissions. Each record shall include the following information:

(i) Type of test (reasonable suspicion/post-accident);

(ii) Triggering event (including date, time, and location);

(iii) Reason(s) test could not be completed within eight hours;

(iv) If blood alcohol testing could have been completed within eight

hours, the name, address, and telephone number of the testing site where blood testing could have occurred; and

(3) Records of alcohol tests that could not be completed in eight hours shall be submitted to the FHWA at the following address: Attn: Alcohol Testing Program, Office of Motor Carrier Research and Standards (HCS-1), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

(4) Controlled substance tests. If a test required by this section is not administered within 32 hours following the accident, the employer shall cease attempts to administer a controlled substances test, and prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the FHWA upon request of the Associate Administrator.

(c) A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the employer to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

(d) An employer shall provide drivers with necessary post-accident information, procedures and instructions, prior to the driver operating a commercial motor vehicle, so that drivers will be able to comply with the requirements of this section.

(e)(1) The results of a breath or blood test for the use of alcohol, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local alcohol testing requirements, and that the results of the tests are obtained by the employer.

(2) The results of a urine test for the use of controlled substances, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the re-

quirements of this section, provided such tests conform to the applicable Federal, State or local controlled substances testing requirements, and that the results of the tests are obtained by the employer.

(f) *Exception.* This section does not apply to:

(1) An occurrence involving only boarding or alighting from a stationary motor vehicle; or

(2) An occurrence involving only the loading or unloading of cargo; or

(3) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in §571.3 of this title) by an employer unless the motor vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with §177.823 of this title.

**§382.305 Random testing.**

(a) Every employer shall comply with the requirements of this section. Every driver shall submit to random alcohol and controlled substance testing as required in this section.

(b)(1) Except as provided in paragraphs (c) through (e) of this section, the minimum annual percentage rate for random alcohol testing shall be 25 percent of the average number of driver positions.

(2) Except as provided in paragraphs (f) through (h) of this section, the minimum annual percentage rate for random controlled substances testing shall be 50 percent of the average number of driver positions.

(c) The FHWA Administrator's decision to increase or decrease the minimum annual percentage rate for alcohol testing is based on the reported violation rate for the entire industry. All information used for this determination is drawn from the alcohol management information system reports required by §382.403 of this part. In order to ensure reliability of the data, the FHWA Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry violation rate. Each year, the